

CALIFORNIA COASTAL COMMISSION

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**TH 15a****STAFF REPORT: DEVELOPMENT AGREEMENT**

DATE: November 18, 2008

TO: Commissioners and Interested Persons

FROM: John Ainsworth, Deputy Director
Teresa Henry, South Coast Area Office District Manager
Al Padilla, Coastal Program Analyst

SUBJECT: Public Hearing and Commission Action on a Development Agreement (#5-08-278) between the City of Santa Monica and Related/Santa Monica Village, LLC, located at 1600-1800 Block, East side of Ocean Avenue, Santa Monica, County of Los Angeles (For Public Hearing and Commission Action at the December 10-12, 2008 Commission meeting in San Francisco)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending that the Commission APPROVE the Development Agreement as submitted. The proposed Development Agreement is in conformity with the Chapter 3 policies of the Coastal Act and with the Commission's action on CDP No. 5-08-159, approved by the Commission in September 2008.

STAFF NOTE:

On September 10, 2008, the California Coastal Commission granted a permit, Coastal Development Permit 5-08-159, to the City of Santa Monica's Redevelopment Agency for construction of a mixed use development consisting of 164 market-rate condominiums; 160 affordable rental units; 20,000 square feet of ground floor retail/restaurant space, with 3,000 square feet of outdoor dining; 619 parking spaces; public access improvements; and landscaping. Maximum height of the structures will be 65 and 96 feet and the project will be designed to achieve certified LEED Silver status and include a photovoltaic system on the roof.

Subsequent to the Commission approval of the CDP, the applicant submitted the Development Agreement on October 10, 2008 for Commission action.

Although the development agreement purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any project that has not yet received Coastal Act authorization, the Development Agreement (DA) does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the development agreement imposes no

restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act.

ADDITIONAL INFORMATION:

Questions concerning the subject development agreement should be directed to Al Padilla, South Coast District Office, California Coastal Commission, 200 Oceangate, Suite 1000, Long Beach, CA 90802. (562) 590-5071.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL OF FINDINGS

MOTION: *I move that the Commission approve Development Agreement 5-08-278, as submitted.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in approval of the development agreement as submitted and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

APPROVAL OF DEVELOPMENT AGREEMENT

The Commission hereby **APPROVES** the development agreement on the grounds that the development, would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation policies of Chapter 3, would not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Background and Content of Development Agreement

1. Contents of a Development Agreement

California Government Code Sections 65864-65869.5 authorizes any city, county, or city and county, to enter into a development agreement with any person having a legal or equitable interest in real property for the development of property owned by that entity. A development agreement specifies the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. According to Government Code Section 65865.2, the development agreement "...may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time. The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time." Government Code Section 65866 states further that, [u]nless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies."

However, pursuant to Section 65869 "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action." Since the City of Santa Monica does not have a certified local coastal program, any development agreement that pertains to property within the City's coastal zone must be approved by the Commission. Thus, the City of Santa Monica has submitted the subject development agreement (herein 'DA').

2. Location of Area to be Affected by Proposed Development Agreement

The subject DA pertains to approximately 3.7 acres within the coastal zone of the City of Santa Monica (see Attachment No. 1 for the Development Agreement). The project site is located south of the Santa Monica Freeway and is bounded by Main Street to the east,

Ocean Avenue to the west, and Vicente Terrace to the south, in the City of Santa Monica (see Exhibits No. 1 and 2 of the attached Staff Report for CDP No. 5-08-159, Attachment No. 2). The surrounding area is developed with the five-story, 72 foot high RAND Corporation building to the east, a 96 foot high hotel (Viceroy) to the southeast, and a 56 foot high office building along the western edge of the development.

3. Recently Approved Coastal Development Permits

On September 10, 2008, the Commission approved Coastal Development Permits 5-08-159(City of Santa Monica). The permit approved the construction of a residential/commercial mix use development consisting of 324 residential units, including 160 affordable rental units and 164 market rate condominiums; approximately 20,000 square feet of ground floor commercial space; with 619 on-site parking spaces on a 3.7 acre site. The proposed development consists of seven separate buildings and is divided into three separate sites:

Site A: Two condominium buildings with ground floor retail on Ocean Avenue, Olympic Drive and Main Street frontages with approximately 66 residences
109,346 gross square feet residential
9,930 gross square feet commercial
Height- 65 feet high as measured from Ocean Avenue sidewalk
180 subterranean parking spaces

Site B: Four affordable apartment buildings, with ground floor live/work space
Approximately 28 one-bedroom, 56 two-bedroom, and 66 three bedroom residences, plus 10 affordable units of live/work space intended for artists
191,549 gross square feet
Height- 60 feet high measures from Ocean Avenue sidewalk
197 parking spaces

Site C: One condominium building with ground floor retail; and approximately 98 one-bedroom and two-bedroom residences (Vesting Tentative Tract Map No. 69822);
159,288 gross square feet residential
7,400 gross square feet commercial.
96 feet high
237 parking spaces

The project will include extension of Olympic Drive from Main Street to Ocean Avenue, providing direct local access to the Interstate 10 Freeway, and providing approximately 16 to 18 on-street additional public parking spaces adjacent to the development. The project will also incorporate native and non-invasive landscaping, public art, bicycle parking for employees/residents and the public, and public space in the form of a pedestrian street ("Living Street") and plaza ("Olympic Plaza"). The proposed development will be designed to achieve a minimum of LEED silver certification and will include sustainable elements involving building design and materials, onsite energy generation from photovoltaic systems and energy savings from green energy design, energy and water use reduction

strategies, and recycling of construction and consumer waste (see attached Staff Report for CDP No. 5-08-159, Attachment No. 2).

The City is also requiring the developer to participate in a Transportation Demand Management program and to contribute a transit service enhancement fee of \$700,000 to subsidize the City's bus service, school-based transportation programs, and/or Civic Center shuttle to connect the Civic Center with Downtown and Main Street and a free transit pass program.

B. Development

Section 30250 of the Coastal Act states in part that:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30251 of the Coastal Act states in part that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The site consists of approximately 3.7 acres. The general vicinity is developed with residential, hotels, office, and retail uses. Land uses immediately surrounding the area, include City Hall, a Los Angeles County Court facility, and the Santa Monica Civic Auditorium, all located east of Main Street. To the west of Main Street, land uses include RAND, Chez Jay restaurant, Ocean Lodge Motel, and several vacant parcels that are used as surface parking lots along Ocean Avenue. To the southwest is the Pacific Shores Hotel.

Buildings within the Civic Center measure two and three stories, while the Civic Auditorium measures approximately 60 feet in height. The Pacific Shores Hotel, located to the southwest of the proposed site is eight stories and over 96 feet in height.

The DA contemplates the construction of a maximum of 325 (324 proposed and approved in CDP No. 5-08-159) residential dwelling units which include 160 affordable dwelling units and up to 165 (164 proposed and approved in CDP No. 5-08-159) market-rate condominium units; up to 20,000 square feet of neighborhood and visitor-serving retail and restaurant space; and up to 3,000 square feet of outdoor dining area. Heights of the

proposed development will vary from 60 feet to 96 feet. The proposed mixed use development is consistent with the uses found in the surrounding area and the scale of the proposed development is consistent with the surrounding development.

The Commission has previously approved the development contemplated by the DA under CDP No. 5-08-159. The building heights approved under CDP No. 5-08-159 are consistent with the heights contemplated by the DA and the City approved project plans. Furthermore, the Commission found in approving CDP No. 5-08-159 that due to the project's location and existing development between the project site and the ocean, the proposed building would not have any adverse impacts on public coastal views.

Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any projects that have not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30250 and 30251 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Sections 30250 and 30251 of the Coastal Act.

C. Coastal Access

The Commission has consistently found that a direct relationship exists between the provision of adequate parking and the availability of public access to the coast. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by providing adequate parking facilities. Section 30252 of the Coastal Act states in part:

The location and amount of new development should maintain and enhance public access to the coast by. . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation. . .

1. Parking

The development contemplated by the DA requires that the number of peak period auto trips to and from the entire project, including trips made by people who park on the street within two blocks of the project, shall be less than 65% of the number of trips calculated before discount for location identified in the EIR traffic analysis. The DA also requires that commercial tenants offer transit subsidies, the provision of a carshare service; concierge service; on-site transportation information; unbundling and leasing of parking spaces for

Sites A and C; contribution into a transit service enhancement fund; and a minimum of fifty-percent of commercial square footage to be allocated for neighborhood servicing uses.

The DA requires the applicant to provide parking for the market rate condominium units at the Zoning code standard of 2 spaces for units with one or more bedrooms and 1 space for studio units; for the affordable housing units commensurate with a demand analysis which shows residential demand at 1.23 spaces per affordable housing unit; and one space for 300 square feet of interior commercial area; and shared parking program between commercial and residential guest parking.

The applicant is proposing to provide 619 on-site parking spaces within a multi-level subterranean parking garage and surface lot for the mixed use development consisting of 160 affordable residential units; 164 market rate condominium units, 5,748 square feet of retail; and 11,550 square feet of restaurant (10,425 square feet of serviceable area). According to the City, the parking proposed for the project is based on: (1) a parking demand analysis for the affordable rental housing; and (2) a shared parking demand analysis for the ground floor commercial uses. The City's parking study concludes that the project design, mix of uses, and location is conducive to reduced parking demand and shared use, and that parking demand for the commercial uses would be reduced by approximately 50% from the Commission parking requirements.

Based on this information, the Commission found, in approving CDP No. 5-08-159, that the 619 parking spaces proposed was adequate to support the demand. Therefore, the parking supply contemplated by the DA is consistent with CDP No. 5-08-159.

2. Traffic

The DA requires the project to reduce vehicular trip generation at the site through Sustainable Transportation Measures to minimize vehicle trips to and from the site. Part of these measures include requiring a minimum of 50% of the retail uses on-site to be neighborhood serving and utilize shared parking between commercial and residential guest uses. The development will incorporate a Transportation Demand Management (TDM) program that has a performance target to reduce vehicle trips (approximately 2,521 daily trips) anticipated by the EIR by 35%. The TDM program will include such measures as: providing car-pooling parking spaces; an on-site car share program; concierge service to accept deliveries and complete certain specified errands in sequential grouped trips; transit subsidy for employees and low-income residences; provision of transportation information/promotions about transit services, bicycle facilities for employees, residents, and visitors; on-site sales of transit fares; and provision of a minimum of 100 secure bicycle parking spaces, with shower and locker facilities for employees of the commercial use. The DA also requires the developer to contribute a total of \$700,000 to a transit service development fund, to support and improve public transit to the site and provide and improve transit to and from local schools.

All development of the site must be undertaken in a manner which is consistent with the requirements imposed by the Commission in its authorization of development under CDP No. 5-08-159, which maintains and enhances public access, as required by the Chapter 3 policies of the Coastal Act. Any impacts associated with any future project on the site would be identified and mitigated through the coastal development permit process.

3. Conclusion

All parking and traffic impacts associated with development contemplated by the DA were identified and mitigated by the Commission in CDP No. 5-08-159. Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30252 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Sections 30252 of the Coastal Act.

D. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The development contemplated in the DA poses a potential source of pollution due to contaminated runoff from the proposed construction activity, parking areas and other hardscape. The City, to mitigate potential impacts from development, has adopted an Urban Runoff Ordinance. The ordinance requires projects to incorporate best management practices with extensive recommendations and measures to reduce or prevent contaminants from running off the site. The City requires all new development to achieve twenty- percent reduction of the projected runoff for the site and the use of oil and water separators or clarifiers to remove petroleum-based contaminants and other pollutants. Furthermore, the City has a new state-of-the-art stormwater treatment facility

that treats all dry weather storm runoff. Runoff from all new development is directed to existing stormdrains, which direct stormwater to the treatment facility.

The contemplated DA requires the preparation and submittal of an Urban Runoff Mitigation Plan and compliance with the City's Urban Runoff Pollution Ordinance for the construction phase and post construction activities. Runoff from construction activities are required to be contained on site, and all parking areas and structures generating wastewater with potential oil and grease content are required to pretreat the wastewater, using clarifiers or oil/water separators, before discharge to the City sewer or storm drain systems. The contemplated DA also requires the applicant to prepare a Stormwater Pollution Prevention Plan (SWPPP), and obtain a National Pollutant Discharge Elimination System permit (NPDES), if necessary, in compliance with the standards and requirements of the California Regional Water Quality Control Board (RWQB).

Coastal Development Permit No. 5-08-159 was approved with a special condition requiring that the development comply with all applicable City water quality standards, which require conformance with the RWQB requirements. The water quality requirements of the DA are consistent with CDP No. 5-08-159.

Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30231 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Section 30231 of the Coastal Act.

E. Cultural Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The proposed site is currently developed and has been disturbed in the past. According to the EIR, archaeological records indicate the presence of two prehistoric sites within a one-mile radius of the Civic Center area. The EIR states that the potential for archaeological resources is

small due to past development of the site; however, there is a remote possibility of a deeply buried site being uncovered during excavation.

The development contemplated in the DA includes deep excavations to construct the subterranean levels. In CDP No. 5-08-159, to address the potential of uncovering archaeological resources and to ensure consistency with Section 30244 of the Coastal Act, the Commission imposed a special condition to require the applicant to monitor all grading and construction activities and required appropriate recovery and mitigation measures, regarding excavation, reporting and curation.

Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30244 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Section 30244 of the Coastal Act.

[Click here to go to the
Development Agreement.](#)